

This opinion is subject to petition for rehearing

Filed 10/13/15 by Clerk of Supreme Court

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

2015 ND 244

Nathan G. Dubray,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

No. 20140428

Appeal from the District Court of Grand Forks County, Northeast Central Judicial District, the Honorable Debbie Gordon Kleven, Judge.

AFFIRMED.

Per Curiam.

Charles J. Sheeley (argued), 3332 Fourth Ave. S., Ste. 2D1, Fargo, ND 58103, for petitioner and appellant.

Mark J. McCarthy (argued) and Meredith H. Larson (on brief), Assistant State's Attorneys, P.O. Box 5607, Grand Forks, ND 58206-5607, for respondent and appellee.

Exhibit #2

Dubray v. State

No. 20140428

Per Curiam.

[¶1] Nathan Dubray appeals from a district court order denying his application for post-conviction relief. In 2013, Dubray pled guilty to two counts of gross sexual imposition, a class AA felony. Dubray applied for post-conviction relief claiming ineffective assistance of counsel and seeking to withdraw his guilty pleas and proceed to trial. After an evidentiary hearing, the district court denied his application. Dubray appealed, arguing the district court committed reversible error in denying his application claiming his guilty pleas were not voluntary because he received ineffective assistance of counsel and was prejudiced by his trial counsel's failure to (1) hire a private investigator; (2) depose witnesses; (3) move to exclude evidence; and (4) communicate all known facts to Dubray. Dubray also argues the district court applied the wrong standard to the second prong of its analysis. Courts need not address both prongs of the Strickland test if a court can resolve the case by addressing only one prong. Rencountre v. State, 2015 ND 62, ¶ 7, 860 N.W.2d 837. We conclude the district court's finding that Dubray's trial counsel's representation did not fall below an objective standard of reasonableness is not clearly erroneous. Therefore, we summarily affirm under N.D.R.App.P. 35.1(a)(2).

[¶2] Gerald W. VandeWalle, C.J.
Lisa Fair McEvers
Daniel J. Crothers
Dale V. Sandstrom
Carol Ronning Kapsner

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

JUDGMENT

Supreme Court No. 20140428
Grand Forks County Case No. 2014-CV-00960

Appeal from the district court for Grand Forks County.

Nathan G. Dubray,

v.

State of North Dakota,

Petitioner and Appellant

Respondent and Appellee

[¶1] This appeal having been heard by the Court at the September 2015 Term before:

[¶2] Chief Justice Gerald W. VandeWalle, Justice Dale V. Sandstrom, Justice Carol Ronning Kapsner, Justice Daniel J. Crothers, and Justice Lisa Fair McEvers;

[¶3] and the Court having considered the appeal, it is ORDERED AND ADJUDGED that the order of the district court is AFFIRMED under N.D.R.App.P. 35.1(a)(2).

[¶4] This judgment, together with the opinion of the Court filed this date, constitutes the mandate of the Supreme Court on the date it is issued to the district court under N.D.R.App.P. 40.

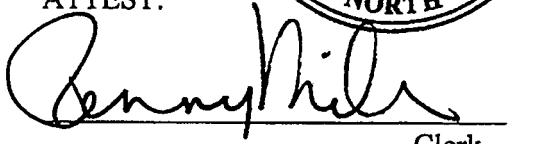
Dated: October 13, 2015

By the Court:



Chief Justice

ATTEST:



Clerk

